

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Low

February 24, 2015

An act to amend Sections ~~6450~~ 143.1, 6450, and 6451 of, and to add Section 6450.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Low. Occupational safety and health.

Existing law establishes the ~~Division of~~ Occupational Safety and Health *Standards Board* in the Department of Industrial Relations to ~~enforce~~ *adopt, amend, or repeal* employment safety standards and laws. *Existing law authorizes the board, upon the application of an employer, to grant a permanent variance from an occupational standard or order after specified notice and hearing requirements are met.* The California Occupational Safety and Health Act of 1973 *also* authorizes an employer to apply to the ~~division~~ *Division of Occupational Safety and Health, that enforces employment safety laws*, for a temporary order granting a variance from an occupational safety or health standard and requires the order to be granted only if the employer's application satisfies specified requirements. Existing law provides that a temporary order may be granted only after notice to employees and an opportunity for a hearing. Existing law specifies the information that an application for a temporary order is required to contain.

This bill would require an employer to also give notice to workers at the place of employment who will be affected by ~~the~~ *a permanent or* temporary variance, or representatives of affected workers, who may be affected by or exposed to the hazards by the *permanent or* temporary

variance from an occupational safety and health standard. The bill would require any affected worker, or representative of affected workers, upon request, to be granted party status to the variance proceedings. The bill would require the ~~temporary~~ variance application to include a certification that the employer has given notice to affected workers as required. Because a violation of the new requirements for employers would be a crime under certain circumstances, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 143.1 of the Labor Code is amended to
2 read:

3 143.1. (a) The board shall conduct hearings on such requests
4 for a permanent variance after employees or employee
5 representatives *of the applicant* are properly notified and given an
6 ~~opportunity to appear. All board decisions on permanent variance~~
7 ~~requests shall be final except for any rehearing or judicial review~~
8 ~~provided for by law.~~ notified. The applicant shall also give notice
9 to workers at the place of employment who will be affected by the
10 permanent variance, or representatives of affected employees who
11 may be affected by, or exposed to, hazards by the permanent
12 variance from an occupational safety and health standard. The
13 applicant shall provide certification that the affected employees
14 have been given notice of the request for a permanent variance.

15 (b) Upon request to the board, affected employees or their
16 representatives shall be granted party status to the variance
17 proceeding.

18 (c) All board decisions on a permanent variance shall be final
19 except for a rehearing or judicial review provided for by law.

20 ~~SECTION 1.~~

21 SEC. 2. Section 6450 of the Labor Code is amended to read:

1 6450. (a) Any employer may apply to the division for a
2 temporary order granting a variance from an occupational safety
3 or health standard. A temporary order shall be granted only if the
4 employer files an application that meets the requirements of Section
5 6451, and establishes the following:

6 (1) The employer is unable to comply with a standard by its
7 effective date because of unavailability of professional or technical
8 personnel or of materials and equipment needed to come into
9 compliance with the standard or because necessary construction
10 or alteration of facilities cannot be completed by the effective date.

11 (2) The employer is taking all available steps to safeguard
12 employees against the hazards covered by the standard.

13 (3) The employer has an effective program for coming into
14 compliance with the standard as quickly as practicable.

15 (b) Any temporary order issued under this section shall prescribe
16 the practices, means, methods, operations, and processes the
17 employer is required to adopt and use while the order is in effect
18 and state in detail a program for coming into compliance with the
19 standard. Such a temporary order may be granted only after notice
20 to employees and other affected workers as described in Section
21 6450.5 and an opportunity for a hearing. However, the division
22 may issue one interim order for a temporary variance upon
23 submission of an application showing that the employment or place
24 of employment will be safe for employees and other affected
25 workers pending a hearing on the application for a temporary
26 variance. A temporary order shall not be in effect for longer than
27 the period needed by the employer to achieve compliance with the
28 standard or one year, whichever is shorter, except that such an
29 order may be renewed not more than twice provided that the
30 requirements of this section are met and an application for renewal
31 is filed before the expiration date of the order. A single renewal
32 of an order shall not remain in effect for longer than 180 days.

33 ~~SEC. 2.~~

34 SEC. 3. Section 6450.5 is added to the Labor Code, to read:

35 6450.5. The employer shall also give notice to workers at the
36 place of employment who will be affected by the temporary
37 variance, or representatives of affected workers, who may be
38 affected by or exposed to the ~~hazards~~ *hazard covered by the*
39 *standard*, by the temporary variance from an occupational safety
40 and health standard. Upon request to the division, or to the

1 standards board upon appeal pursuant to Section 6455, any affected
2 worker, or representative of affected workers, shall be granted
3 party status to the variance proceedings.

4 ~~SEC. 3.~~

5 *SEC. 4.* Section 6451 of the Labor Code is amended to read:

6 6451. An application for a temporary order under Section 6450
7 shall contain all of the following:

8 (a) A specification of the standard or portion thereof from which
9 the employer seeks a variance.

10 (b) A representation by the employer, supported by
11 representations from qualified persons having firsthand knowledge
12 of the facts represented, that the employer is unable to comply
13 with the standard or portion thereof and a detailed statement of
14 the reasons therefor.

15 (c) A statement of the steps the employer has taken and will
16 take, with specific dates, to protect employees against the hazard
17 covered by the standard.

18 (d) A statement of when the employer expects to be able to
19 comply with the standard and what steps the employer has taken
20 and will take, with dates specified, to come into compliance with
21 the standard.

22 (e) A certification that the employer has informed employees
23 of the application by giving a copy thereof to their authorized
24 representative, posting a statement giving a summary of the
25 application and specifying where a copy may be examined at the
26 place or places where notices to employees are normally posted,
27 and by other appropriate means. A description of how employees
28 have been informed shall be contained in the certification. The
29 information to employees shall also inform them of their right to
30 petition the division for a hearing.

31 (f) A certification that the employer has given notice as required
32 in Section 6450.5.

33 ~~SEC. 4.~~

34 *SEC. 5.* No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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